

Date: _____

Please submit 12 copies

Application Fee: \$ 150.00



CITY OF NEW BALTIMORE

36535 GREEN STREET • NEW BALTIMORE, MI 48047 • (586) 725-2151 • FAX (586) 725-6927

APPLICATION TO THE ZONING BOARD OF APPEALS

Property Owner/Applicant: _____

Site Address: _____ New Baltimore, MI 48047

Phone: _____ Fax: _____

Parcel Identification No.: _____ Existing Zoning: _____

Complete Legal Description (Attach separately if necessary): _____

A. Request Ordinance Interpretation, Text and/or Map:

Article: _____ Section: _____ of the City of New Baltimore Zoning Ordinance.

B. Request Appeal of Administrative Decisions, Non-use or Dimensional Variances to:

Article: _____ Section: _____ of the City of New Baltimore Zoning Ordinance.

C. Request Use Variance.

Property Owner Signature

Chairman, New Baltimore Zoning Board of Appeals

DECISION: The appeal was granted / not granted Meeting Date: _____

For the board to approve a non-use or dimensional variance, the applicant must show practical difficulty by showing the following:

The strict enforcement of the Zoning Ordinance would cause practical difficulty and deprive the owner of rights enjoyed by all other property owners within the same zoning district;

The requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district;

The plight of the owner is due to unique circumstances of the property; and

The problem is not self created:

ARTICLE XII. ZONING BOARD OF APPEALS*

***Cross references:** Administration, ch. 2.

Sec. 60-271. Creation and membership.

(a) There is hereby established a zoning board of appeals which shall perform its duties and exercise its powers as provided in Act 110 of the Public Acts of 2006, as amended, and in such a way that the objectives of this chapter shall be observed, public safety secured, and substantial justice done. The zoning board of appeals shall consist of seven regular members, each to be appointed for a term of three years, expiring on December 31 in the year of expiration. All vacancies for unexpired terms shall be filled for the remainder of the term. The compensation for members of the board may be established by city council. One of the members of the board shall be a member of the planning commission. Members shall be appointed by the mayor and confirmed by city council.

(b) The city council herewith also establishes positions for two alternate members to serve on the zoning board of appeals. Each alternate member shall be appointed by the Mayor and confirmed by the city council to serve a three-year term. The alternate members shall be called on a rotating basis to sit as regular members of the Board in the absence of a regular member. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. Once an alternate has been called to serve in a particular case, he or she shall continue to serve and participate in that case until a final decision has been rendered.

(c) Members of the zoning board of appeals shall be removable by the city council for nonperformance of duty or misconduct in office, upon written charges and after public hearing. A member shall disqualify himself or herself from a vote in which he or she has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which he or she has a conflict of interest may constitute misconduct in office.

(Ord. No. 158, § 12.00, 9-22-2008)

Sec. 60-272. Proceedings of the board.

(a) The zoning board of appeals shall establish rules and procedures in accordance with the provisions of this chapter and the applicable state law.

(b) All meetings of the zoning board of appeals shall be held at the call of the chairman or the board in accordance with their adopted procedures and at such other times as the board shall determine or specify in its rules of procedure. All meetings, including hearings, conducted by the board shall be open to the public, and all business of the board shall be conducted at such meetings. The board shall not conduct business unless a majority of its members are present.

(Ord. No. 158, § 12.01, 9-22-2008)

Sec. 60-273. Powers of the zoning board of appeals.

(a) *Chapter interpretation.*

(1) Interpret of this chapter, text and map, and all matters relating thereto whenever a question arises in the administration of this chapter as to the meaning and intent of any provision or part of this chapter. Any text interpretations shall be narrow and in a manner as to carry out the intent and purpose of this chapter. Interpretations shall not have the effect of amending the ordinance.

(2) Map interpretations should be based on the rules of this chapter (article IV) and any relevant historical information.

(b) *Appeals of administrative decisions, nonuse or dimensional variances.*

(1) To hear and decide appeals where it is alleged by the appellant that there is error in any order, interpretation, requirement, permit, decision or refusal made by the zoning official or building department in enforcing any provision of this chapter.

(2) To hear and decide on all matters referred to it or upon which it is required to pass under this chapter.

(3) Permit such modification of the height, placement and area regulations as may be necessary to secure an appropriate improvement of a lot which is of such shape, or so located with relation to surrounding development or physical characteristics, that it cannot otherwise be appropriately improved without such modification.

(4) Permit the modification of the automobile parking space or loading space requirements where, in the particular instance, such modifications will not be inconsistent with the purpose and intent of such requirement.

(5) Permit nonuse or dimensional variances, such as walls, buffering, screening or landscaping.

(6) For the board to approve the above non-use or dimensional variance, the applicant must show practical difficulty by showing:

a. The strict enforcement of this chapter would cause practical difficulty and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district;

b. The requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district;

c. That the plight of the owner is due to unique circumstances of the property; and

d. That the problem is not self-created.

(c) *Use variance.*

(1) A use variance is a modification of the literal provisions of this chapter which may be authorized by the zoning board of appeals when strict enforcement of this chapter would cause unnecessary hardship for the property owner due to circumstances unique to the property.

(2) A use variance permits a use of land that is otherwise not allowed in that district. Improper grant of use variances usurps the authority of the planning commission and the legislative body and has the same effect as a rezoning without going through the rezoning process.

(3) The board shall authorize, upon an appeal, a variance to the use of land, building or structure, provided that the evidence in the official record of the appeal affirmatively supports all of the following findings:

- a. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved, or to the intended use of the property, that do not apply generally to other properties or uses in the same district or zone;
- b. That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity;
- c. That the granting of such variance will not unreasonably increase the congestion in public streets, or increase the danger of fire, or endanger the public safety, or unreasonably diminish or impair established property values within the surrounding area;
- d. That the proposed variances will not impair an adequate supply of light and air to adjacent property;
- e. That allowing the variance will result in substantial justice being done considering the public benefits intended to be secured by this chapter, the individual hardships that will be suffered by a failure of the board to grant a variance, and the rights of others whose property would be affected by the allowance of the variance;
- f. That the variance is the minimum variance that will make possible the reasonable use of the land, building or structure; and
- g. That the granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

(Ord. No. 158, § 12.02, 9-22-2008)

Sec. 60-274. Limitations on powers of zoning board of appeals.

- (a) The concurring vote of four members of the board shall be necessary to approve any modification, interpretation or appeal.
- (b) The concurring vote of five members of the board shall be necessary to approve any use variance.
- (c) Nothing contained herein shall empower the board to override the decisions of the planning commission with respect to the approval or denial of special approval land uses.
- (d) Nothing contained herein shall empower the board to override the decisions of the city council with respect to the approval or denial of planned unit developments or any other decision authorized to be made by the city council.
- (e) Nothing contained herein shall empower the board to change the terms of this chapter, to effect changes in the zoning map, or to add to the uses permitted in any zoning district, except when specifically empowered to do so.

(f) Every decision of the board shall be based upon findings of fact, and each and every such finding shall be supported in the record of the proceedings of the board.

(g) In authorizing a variance or taking any other action within its jurisdiction, the board may attach such conditions as may be deemed necessary in the furtherance of the purposes of this chapter.

(h) Any person aggrieved by the zoning board of appeals may appeal to the circuit court.

(Ord. No. 158, § 12.03, 9-22-2008)

Sec. 60-275. Appeal process.

(a) Appeals shall be commenced by a person filing a notice of appeal or petition as described in the rules and procedures of the zoning board of appeals, accompanied by such appeal fee as may be specified by city council. The notice of appeal shall specify the specific grounds upon which the appeal is based and shall be signed by the applicant. It shall also specify the requirement from which a variance is sought and the nature and extent of such variance.

(b) The appeal shall also be accompanied by a fully completed application, along with plot plans meeting the rules of procedure adopted by the board.

(c) The board shall fix a reasonable time for the hearing of appeals and shall give due notice thereof as required by law.

(d) The building department shall transmit to the board all of the documents and records related to the appeal.

(e) Any person may appear in person or be represented by a duly authorized agent.

(f) The board shall prepare an official record for each appeal and shall base its decision on this record. The official record shall include:

(1) The relevant administrative record and administrative orders issued thereon relating to the appeal.

(2) The notice of appeal.

(3) Such documents, exhibits, photographs, or written reports as may be submitted to the board for its consideration.

(4) The minutes of the hearing, findings of fact, and decisions and orders of the board.

(g) The record and decision of the board shall meet all of the following:

(1) Complies with the constitution and laws of this state.

(2) Is based upon proper procedure.

(3) Is supported by competent material and substantial evidence on the record.

(4) Represents the reasonable exercise of discretion granted by law to the zoning board of appeals.

(Ord. No. 158, § 12.04, 9-22-2008)

Sec. 60-276. Zoning board of appeals approval.

(a) No order of the zoning board of appeals permitting the erection or alteration of a building shall be valid for a period longer than six months, unless a building permit for such erection or alteration is obtained within such period, and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit. The applicant may file, in writing, a request for an extension of said zoning board of appeals approval of up to 180 days. The request shall be filed at the building department. The building official reserves the right to deny such request.

(b) No order of the zoning board of appeals permitting a use of a building or land shall be valid for a period longer than six months, unless such use is established within such period; provided, however, that where such order shall continue in force and effect if a building permit for said erection or alteration is started and proceeds to completion in accordance with such permit.

(Ord. No. 158, § 12.05, 9-22-2008)

Secs. 60-277--60-290. Reserved.